LEGAL SERVICES

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RIOTS PANEL URGES EXPANSION OF LSP

The recent report of the National Advisory Commission on Civil Disorders has documented and underscored the importance of bringing legal services to poor people. It called for a substantial expansion of the OEO Legal Services Program through increased private and public funding.

The commission found that conflicts between ghetto residents and white landlords and white merchants were the source of some of the most intense grievances underlying the riots of the summer of 1967. It said that litigation was just one area in which ghetto residents needed legal help.

The commission report proposed the establishment of "formal mechanisms for the processing of grievances" by local governments and said that participation in such grievance procedures would probably require legal assistance.

The report also outlined a need for representation in a variety of other situations, such as before welfare agencies and other government institutions such as planning boards developing new programs.

Although it recognized that OEO Legal Services Programs had "made a good beginning in providing legal assistance to the poor" it found that too often lawyers were just not available to impoverished ghetto residents.

The commission called on law schools to develop programs in which law students could provide legal assistance to the poor as a part of their education.

There were many striking similarities between the recommendations of the riots commission and the work of Legal Services. Many of the actions recommended by the report had been carried out in practice by Legal Services Programs during the two years before the report was issued.

For example, the commission listed 12 deeply-held grievances that lay behind the disorders it studied. Eight of the 12 grievances listed (they are divided into three levels of intensity) are areas in which Legal Services lawyers have represented hundreds of thousands of indigent clients and thousands of groups of poor people. They are areas in which LSP has challenged and reformed the law.

The eight major grievance areas in which Legal Services has been active for two and one-half years are, in the commission's order, as follows:

Police practices, inadequate housing, inadequate education, ineffectiveness of the political structure and grievance mechanisms, discriminatory administration of justice, inadequacy of municipal services, discriminatory consumers' and credit practices, and inadequate welfare programs.

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PRESIDENT ASKS LAW ON RETALIATORY EVICTIONS

President Johnson has proposed legislation to prevent the retaliatory eviction of tenants who report housing code violations.

In his Message to Congress on the District of Columbia March 18, the President called the practice engaged in by some landlords in D. C. an "abhorrent injustice."

It is believed to be the first time the President has proposed legislation on a problem that was first raised by Legal Services lawyers.

The Neighborhood Legal Services Project in D. C. has a case pending before the U. S. Court of Appeals in which it challenged the constitutionality of an alleged retaliatory eviction of tenant Yvonne Edwards. The case was started in 1965.

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Director's Column

In what is undoubtedly one of the most impressive documents to be produced by this nation's government during the past two decades, *The Report of the National Advisory Commission on Civil Disorders*, has sounded a clear call for action. The report sounds both a plea and a warning. A plea that we will purge ourselves and our institutions of the blight of discrimination. And a warning that, unless we do, we can expect even longer and hotter summers than in the past.

If there is one institution in our soicety that has discriminated against the poor and minority groups, more and with less reason, it is the legal system. In a nation founded on the free enterprise ideal, it is not too surprising to find great inequalities in housing, recreation, clothing; even food and medicine. But in a nation dedicated to the ideal of equal justice before the law—with a constitutional preamble holding up "the establishment of justice" as one of the five basic goals for the nation's government—it is inexcusable to permit discrimination on the basis of poverty in our legal system. It is not merely a failure to provide counsel I am talking about, although that is a part of the problem. I am referring to total access to all the public institutions that make the basic decisions in our society—the courts, administrative agencies and legislative bodies. And, more than that, I am talking about placing more of the basic decisions under the jurisdiction of public institutions to which the poor can have equal access. Or, to state the proposition differently, I am suggesting we must open up existing formal dispute mechanisms to the poor, and further that we must subject more types of disputes to effective dispute-settling mechanisms. In some cases this will require the creation of new mechanisms.

To my mind one of the very basic causes of civil disorder is the fact that as to many of the grievances held by the poor, there exist no legal peaceable mechanisms for redress, or if a mechanism exists, it is available only to those with financial means. Normally, the absence of a formal grievance procedure does not harm the more privileged classes to the same degree it does the poor. The wealthy, and to a lesser but still substantial degree the middle class, can obtain redress through the exercise of informal power and influence. For example, a more privileged member of society, subjected to police brutality, more often than not can obtain the dismissal or suspension of a policeman from the Police Department and a more careful performance of police officers merely through the informal pressures he can exert. A poor man has no access to this kind of informal but very real power. If he is brutalized by the police, society must provide a formal system for ascertaining the facts and taking corrective measures, or the wrong will go unrighted. It will merely fester until, accumulated with a thousand unrighted wrongs, it erupts into violence. The same principle holds as to disputes between private parties in the absence of a formalized, effective unbiased dispute-settling mechanism available to all. The side with the greater wealth, power and influence invariably will prevail, and right or wrong, that side will prevail again and again until the consistent loser strikes back with force against the system (or lack of system).

It is not surprising that the Project Advisory Group of the OEO Legal Services Program identified effective action to create new legal grievance mechanisms and to make existing ones available to the poor a top priority project for all legal services agencies, before and during the coming summer. Every legal services project should be attempting to identify voids in its local dispute-settling system, particularly with respect to long-standing grievances of the poor. The obvious example is police practices. Is there a fair, effective peaceable system for settling disputes about the conduct of local police and correcting police misconduct if it is shown to exist? If not, it is a proper role for a legal services agency to seek to initiate such a system, both because of the agency's dedication to its clients—the poor—and because of a lawyer's fundamental allegiance to the goals of peaceful resolution of all disputes. Legal services projects also should be laying the groundwork now which will enable them to press the alternative of a peaceful resolution of controversy in every incident with riot potential that occurs in their cities this summer. As was done in Washington, Cleveland and elsewhere, they should be taking steps to insure that neighborhood people will inform them immediately if trouble of any nature develops. They further should establish a system which enables them to have attorneys on the scene of an incident within minutes, anytime of day or night. And they should establish sufficient rapport with influential persons in the government to provide a way to offer informal, peaceful grievance mechanisms where the incident cannot be channeled into an existing formal system of dispute resolution.

The absence of adequate grievance procedure is not the sole cause of every civil disorder. And legal services lawyers have not been able to prevent every serious incident from resulting in a riot. But we renege in our duty to clients and to society if we do not forcefully press for a lawful, effective peaceful assertion of their rights and grievances.

—Earl Johnson Jr.

LSP Panel Asks Riots, Law Reform Actions

A new advisory group composed of 24 directors and staff attorneys of Legal Services Programs across the country has recommended that a national task force of Legal Services lawyers be set up to consult with local urban officials on the prevention of civil disorders.

The same group, in its first meeting February 29 and March 1, also recommended the development of a national strategy for law reform efforts by Legal Services Programs.

The Project Advisory Group was established in order to discuss ways to improve relationships and procedures between the OEO and local Legal Services Projects, and other related matters.

The group met with officials of the OEO Legal Services Program at OEO headquarters in Washington. The first day was devoted to the discussion of the fiscal 1968 financial situation, the new amendments to the Economic Opportunity Act, the improvement of relationships between Community Action Agencies and local Legal Services Projects, evaluation procedures, and training and technical assistance needs.

The second-day meeting consisted of subcommittees that considered law reform, the role of Legal Services in preventing civil disorders, support programs and demonstration projects, and the relations between local LSPs and CAAs and the OEO.

The advisory group recommended that the President establish as a national policy that Legal Services Projects are "a primary organ" for aiding poor people to express and obtain redress of their grievances.

The committee also recommended that Legal Services projects be involved in all national and local planning aimed at avoiding civil disturbances or at minimizing the scope and duration of such disturbances if they occur.

The Project Advisory Group recommended the establishment of a national task force composed of Legal Services lawyers who have had experience in the slum communities during civil disorders to consult with elected officials, law enforcement officials, members of the judiciary, LSP directors and bar associations in urban communities on ways to prevent disturbances and to minimize their effects if they occur.

The subcommittee that drafted the recommendations was chaired by Oliver Lofton, director of the Newark Legal Services Project, and included directors of LSPs in Detroit, Cleveland, Miami, Los Angeles and Dallas.

In the field of law reform, the Advisory Group recommended the establishment of a national committee to devise law reform strategy in such fields as welfare, housing, consumer, law, judicial procedures. It said that such a national strategy is feasible, desirable and necessary.

For law reform at the state level, the group urged that all the Legal Services projects in a state join together in a state committee, as has been done already in Massachusetts and Ohio.

While it recognized that programs of different sizes would play varying roles in the field of law reform, the group urged that every Legal Services Project assign one staff member the responsibility for law reform strategy.

The OEO Legal Services Program is in the process of implementing the recommendations of the Advisory Group concerning both the prevention of riots and law reform.

Following are the recommendations on the prevention of civil disturbances:

Legal Services and the "Long Hot Summer"

The Advisory Group, having the benefit of the advice of Legal Services Projects that played a positive role in cities that experienced civil disturbances in the summers of 1966 and 1967, and believing that most civil disorders in recent years have arisen in communities where serious legitimate grievances of alienated people have not been met; believing further that massive disorder has often resulted in such communities from seemingly minor incidents because responsible public officials failed quickly to redress the grievance complained of, and being deeply concerned because our system of laws has largely failed to correct the just grievances of those who experience poverty and discrimination, makes the following recommendations:

1. National Policy Statement. The Advisory Group strongly urges that the President of the United States, the Attorney General of the United States, and the Director of the Office of Economic Opportunity issue a national policy statement that federally funded OEO Legal Services projects are a primary organ for assisting indigent people to express their grievances and to obtain redress through existing legitimate avenues; and seek to create new ways of protecting their rights and effectively redressing their wrongs.

Legal Services projects should be involved in all national and local planning procedures concerned with the avoidance of civil disturbances and with minimizing the scope and duration of such disturbances should they occur. This policy statement should be sent to the Governors of the respective states, the mayors of the cities, local police officials, appropriate members of the Judiciary, and all others concerned with this problem.

2. National Task Force. The Legal Services Program of the OEO should promptly establish a National Task Force composed of Legal Service attorneys who have had experience in the indigent community during the course of civil disturbance, to consult, across the country, with Legal Services project directors in urban communities and with elected officials, law enforcement administrators, members of the judiciary, and leaders of local bar associations concerning the most effective ways to prevent civil disturbances and to minimize the effects should civil disturbances occur.

3. Legal Services Staff. In order for a Legal Services Program to effectively articulate the grievances of the indigent population it must have on its staff at least one person who has the respect and confidence of people representing the most disadvantaged areas of the community. The OEO should make maximum effort to assure that at least one such person can be employed as a part of every urban Legal Services Program.

4. Responsible Staff Member. That Legal Services project directors should promptly designate one member of their staff to be responsible for developing plans and implementing a program for the prevention of civil disturbance and further to insure the maintenance of basic legal rights in the event that civil disturbances should occur.

5. Preventing Civil Disturbances. That as a part of any program for preventing civil disturbances, Legal Services projects should:

(a) vigorously articulate the grievances of the members of the community and seek redress through existing legitimate channels; and seek to create new ways of protecting their rights and effectively redressing their wrongs.

(b) endeavor to make law enforcement officials aware of the kinds of police conduct which can provoke the indigents out of which civil disturbances can arise.

(c) establish channels of communication with law enforcement and other public officials and develop methods through which grievances arising out of provocative incidents can be resolved.

6. Insuring Basic Rights. That as a part of any program for insuring the maintenance of basic legal rights in the event that a civil disturbance does occur, Legal Services Programs should, with other members of the local community, take the initiative for developing plans for:

(a) the maximum use of the release on recognizance procedure rather than the posting of money bail and particularly in the case of curfew violations.

(b) assuring that arrested persons are promptly admitted to reasonable bail.

(c) assuring that arrested persons have legal counsel at the earliest possible moment.

(d) assuring that bail will not be used for purposes of containment, but solely to insure that an arrestee will appear at the time of trial.

Here are excerpts from the Project Advisory Group recommendations on law reform:

National Strategy for Law Reform

Definition: The modes of law reform include test cases, other litigation, negotiations with administration, legislation, constant accumulated pressure, and group representation.

National Statement: A strong national statement from the Director on the primacy of law reform efforts is indicated. It must be clearly and emphatically communicated to lawyers, Legal Services Boards, Community Action Programs, and other concerned parties. Law reform must be used as the chief criterion in evaluation and in funding. Legal Services Program Boards should be prohibited in the delegate agency contract from review of any particular case to determine whether it should be brought or what course of action should be taken in regard to it once the lawyer-client relationship is established.

National Strategy: The assertion we shall act upon is that a national strategy for law reform is feasible, desirable and necessary. The national strategy, however, must not be permitted to preempt spontaneous or planned law reform initiative by local legal services lawyers, or to replace the individual professional judgment of lawyers or the private lawyer-private client relationship.

Varying roles will be played by programs of different sizes. For small programs particularly, but for all programs as well, efforts directed, for instance, at local ordinances, local administration policies, or locally widespread abuses (such as the practices of a particular credit company) must be recognized as law reform.

State Level Reform: For the purpose of state legislative and administrative reform particularly, but also for the coordination of litigation and group action, it is recommended that all of the projects in each state gather together in a state committee on the model of Massachusetts and Ohio. In that way, in each state, strategies can be shared and established.

Consumer Credit Code: The kind of operation typified in the Special Legal Services Program-National Legal Aid and Defender Association Task Force on the proposed Uniform Consumer Credit Code should serve as a model. This Task Force has been preparing and submitting to the Commissioners on Uniform State Laws extensive commentaries on each successive draft of the proposed Code. Such a uniform code could go a long way toward resolv-

Turn to PANEL, p. 8

Lead Poisoning Attacked by Chicago LSP

Legal Services attorneys in Chicago have filed suit against a landlord to compel him to repair an apartment in which they charge two children were poisoned by lead from peeling paint and broken plaster.

The suit, on behalf of a mother and her seven children, charges the landlord has permitted the premises to deteriorate so much that there are gaping holes in the walls and loose paint that flakes onto the floor where the children, aged 4 years and 23 months, pick it up.

The complaint describes this situation as a "nuisance" and says it violates the landlord's implied contractual obligation to maintain the housing in a livable condition.

The case is being represented by George A. Ranney Jr., a Smith Fellow serving with the Legal Aid Bureau; Edward G. Thomson of Community Legal Counsel, also an OEO-funded project, and Ronald Lachner, a VISTA lawyer.

Because lead poisoning among slum children is a serious problem in Chicago, the Legal Aid Bureau announced it is prepared to assist lawyers who will bring suits on behalf of children affected by lead. Private attorneys have been reluctant to take such cases on a contingent fee basis because there is no direct precedent for them and they pose new problems of proof.

Ranney said however that a private lawyer received a $125,000 settlement for a ghetto child who suffered retardation in June of 1967.

If the suit is successful in getting the court to order the landlord to repair the premises, it would be an important victory in the field of tenants rights. It would mean, for example, that a tenant could go into court to compel the landlord to eliminate other slum conditions that imperil health and safety.

The suit said that the two children, Jennifer, 4, and Warren, 23 months, have been observed picking pieces of paint and plaster from the wall and floor and putting these in their mouths; that chemical analysis found that the paint and plaster contained high levels of lead; that tests by the Chicago Board of Health showed Jennifer and Warren had elevated levels of lead in their systems and are undergoing intensive and painful treatment for the condition; that past exposure to high levels of lead has caused them to have extreme heightened appetites, known as "pica" or "perverted appetites," for paint and other non-nutritious substances; and that this condition has caused the two children to seek out and eat lead-containing substances in the apartment despite all efforts of their mother to prevent them.

The complaint said that lead-impregnated paint and plaster is a cumulative poison particularly harmful to young children, to whom it is a common cause of brain damage and death.

George A. Ranney Jr.

Marshall Patner

The seriousness of the problem was illustrated by a screening program conducted last year by the Chicago Board of Health.

Some 31,000 children in slum neighborhoods were screened and 2662 were found to have abnormally high amounts of lead and were called in for further tests. Of these, 757 children were treated for having toxic levels of lead in their bodies. Fourteen children died of lead poisoning in Chicago last year, according to the Cook County Coroner's Office.

It is not known how many children suffer undetected levels and damage from lead poisoning. The effects are gradual and cumulative. Many children who suffer lead poisoning suffer retardation or brain damage.

For these reasons, the Chicago Legal Aid Bureau has determined that legal action against the problem is an important priority in its law reform program. These priorities are set by Arthur K. Young, director, and Marshall Patner, director of the Appellate and Test Case Division.

Although lead poisoning cases could involve substantial money judgments, Legal Aid is not permitted to seek such damages for its clients. Therefore, it will continue to file injunction suits when emergencies arise, and will make available to outside lawyers willing to take such cases—whether on referral from Legal Aid or otherwise—model pleadings, memoranda it has prepared, and technical advice as to what tests are made for lead and what laboratories will perform them.

The bureau may also participate as a friend of the court in such cases. The agency is preparing a report recommending legislative controls and has asked major paint companies to develop a prophylactic to combat existing lead, which tends to permeate plaster and new coats of paint.

Gas Rates Higher in Slums, Complaint Says

Residents of poor areas commonly maintain that public utility companies discriminate by requiring large deposits and charging higher rates in ghetto sections. One such complaint has recently been filed with the District of Columbia Public Services Commission against the Washington Gas Light Company. The complainants are the Neighborhood Advisory Council of the Washington Urban League and the Neighborhood Advisory Council's Consumer Action Committee, acting on behalf of low-income consumers of gas in the area served by the Washington Urban League Neighborhood Development Center.

The complaint, prepared by Neighborhood Legal Services attorneys, requests a full inquiry into certain practices and policies of the gas company to determine their legality and the extent of any arbitrary or discriminatory effects upon low-income consumers. The Commission has also been asked to determine whether deposits should be completely abolished or at least reduced to a minimal uniform amount. The complainants question the company's use of monies being held as deposits and the methods employed to assign or establish credit ratings. In addition, they would inquire into the feasibility of establishing neighborhood consumer complaint offices, a procedure which has been adopted by companies in other metropolitan areas to assist consumers in resolving their problems with gas services.

The complaint reveals that in the fall of 1967 the Consumer Action Committee conducted a four-month neighborhood survey in a poor area to learn how widespread certain gas company practices appeared to be. One of the most significant discoveries was that deposits are both large and extremely varying in amount. Of the more than 21 per cent of the residents who said they had paid over $25, 18 had paid more than $50. Three persons had deposited $100 to $110 and one had paid $150. Even though the gas company states a policy of permitting a requirement of a $10 deposit when gas is used for cooking and a deposit equal to a two-month bill when it is used also for heating, among the families paying as much as $150 for deposits were 33 who said they used gas only for cooking. Only 20 per cent had paid $10 or less.

Thirteen of the 260 families surveyed reported they were without gas because services had been discontinued for non-payment of bills. They could not afford to pay both the overdue bill and the additional amount required as a deposit before services would be resumed. Several had been without gas for more than a year.

The complaint alleges that there is information tending to support a conclusion that some blocks and streets are assigned "credit rating" or deposit ratings, which vary widely. For instance, all consumers on one street are reported to pay a $10 deposit, while on a parallel street residents pay $75. The complainants state that random checks among residents of more affluent neighborhoods indicated that most paid no deposit.

Not one household among 260 reported ever having a deposit returned or receiving interest on a deposit. In addition, the complaint states, some families reported that they had moved several times within recent years and each time had had to make a new deposit, receiving no refund or credit on the old one.

In concluding their factual allegations, the groups stated that almost 40 per cent of the gas users surveyed believed that their gas bills were too high. For instance, a bill of $80 for one winter month for a two-bedroom unit was not uncommon. Heat loss attributable to malfunctioning of equipment accounted for some of these large bills, but in other cases there appeared to be no adequate explanation.

The gas company has denied the charges. A spokesman, who said that consumers with poor credit have to pay deposits irrespective of the neighborhood into which they move, maintained their credit is determined by employment stability, bill-paying habits and other criteria. If there is indeed evidence of discrimination against any group of consumers, he said, the company wishes to be informed and will take action. He stated that the one cited $150 deposit was "ridiculously high" and "obviously an error," either on the part of the company or of the survey.

EVICTIONS, from p. 1

Following is an excerpt from the President's message:

Retaliatory Evictions

One of the most abhorrent injustices committed by some landlords in the District is to evict—or threaten to evict—tenants who report building code violations to the Department of Licenses and Inspections.

This is intimidation, pure and simple. It is an affront to the dignity of the tenant. It often makes the man who lives in a cold and leaking tenement afraid to report those conditions.

Certainly the tenant deserves the protection of the law when he lodges a good faith complaint.

I recommend legislation to prevent retaliatory evictions by landlords in the District.

The District government recently joined with the Legal Services project in asking the court to forbid such evictions. It linked the issue of retaliatory evictions to a "vital public interest"—the enforcement of the housing regulations.

MILESTONE: LSP IN FIRST HIGH COURT APPEARANCE

In late April or early May, Legal Services attorneys will present oral arguments before the Supreme Court for the first time.

The issue on which Legal Services will make its first physical appearance in the high court is, most fittingly, that of the constitutionality of state welfare residency laws. The legality of residency laws in 40 states and the District of Columbia will be decided.

Within the past nine months, Legal Services lawyers have won decisions by three-judge federal courts declaring residency laws unconstitutional in five states and D. C. Legal Services Projects have filed a total of 16 other suits challenging such laws and in eight of these cases, three-judge courts have been convened.

The cases to be argued before the Supreme Court are from Hartford, Conn., Washington, D. C., and Philadelphia. One hour of argument will be permitted in each of the three cases.

The first case to be heard will be argued by Brian Hollander, the young lawyer who won the first residency decision last June for the Hartford Neighborhood Legal Services program. Hollander is now a member of a private firm in Hartford. Attorneys for the Connecticut welfare department and Hollander each will be given 30 minutes for arguments.

In the second case to be heard, Laurens Silver and Peter Smith of the Law Reform unit of the Neighborhood Legal Services Project in D. C. will argue on behalf of the poor clients.

Tom Gilhool, the Consumer Advocate of Community Legal Services in Philadelphia, will appear on behalf of the welfare applicants in the third case to be heard.

In addition to Pennsylvania and Connecticut, the states in which Legal Services has won decisions declaring that residency laws are illegal are Delaware, Illinois, and Wisconsin. These cases were represented by the legal services programs in Wilmington, Chicago (the Legal Aid Bureau), and Milwaukee.

In addition to the above, a three judge court in Baltimore unanimously—but without issuing an opinion—granted a preliminary class injunction restraining enforcement of the residency requirement in Maryland although it did not rule on the constitutional issue.

The other Legal Services cases that have been filed are in South Dakota, Minnesota, Missouri, Washington State, Iowa, Ohio, Oregon, Michigan, South Carolina, and Arizona.

The states of California and Iowa have filed friend of the court briefs on the side of the state welfare department in the Connecticut case before the Supreme Court.

COLUMBIA PROJECT HAS NEW DIRECTORS

Two outstanding lawyers have been chosen recently to direct the Columbia University School of Law Project on Social Welfare.

The new project director is Lee A. Albert, 31, former law clerk to Justice Byron White, who has been serving with the U.S. Attorney for the Southern District of New York.

The new faculty director is Professor Paul M. Dodyk, former editor of the Harvard Law Review and former Rhodes Scholar, who has been on the law school faculty since 1965.

Albert is a summa cum laude graduate of Rutgers University and a magna cum laude graduate of Yale Law School, where he was editor-in-chief of the law review.

Professor Dodyk is a summa cum laude graduate of Amherst, where he was elected to Phi Beta Kappa, and a magna cum laude graduate of the Harvard Law School.

TREASURY LAWYERS URGED TO SERVE POOR

Fred B. Smith, General Counsel of the U. S. Treasury Department, recently issued a policy statement encouraging department lawyers to volunteer their time to provide legal services for the poor.

Following is an excerpt from his statement:

It is in the highest tradition of the legal profession to provide volunteer legal services to the poor without charge. In this tradition, professional programs to provide such services are being carried on in many areas by private and public organizations. This Order is intended to make clear to attorneys throughout the Legal Division that neither the Treasury Department's **Standards of Conduct,** nor the legal profession's ethical standards of conduct preclude an attorney from volunteering to engage in legal assistance programs for the poor if performed within the guidelines described or referred to in this Order. Accordingly, attorneys of the Legal Division will be authorized to engage in such volunteer legal services to the extent compatible with their Treasury duties, and not inconsistent with the policies of their Bureaus.

Johnson Urges Right To Counsel in Civil Cases

Earl Johnson, director of OEO Legal Services, said recently there must be a right to counsel in civil cases for all Americans.

In a speech before the Duval County Legal Aid Association in Jacksonville, Fla., in February, he said that the lack of counsel in civil proceedings deprives the unrepresented person of his right to a fair hearing and to equal protection of the laws.

He said the right to counsel is as fundamental as—and directly related to—the right to vote. In our society of laws, he said, "it is only in the courts and in administrative proceedings that these laws are given life. It is only in the agencies and courts that the individual brings to full, meaningful fruition the exercise of his right to vote."

Johnson said that when a person elects a representative he merely chooses the person who will assist in the *beginning* of a long law-making process. "His right to vote . . . is rendered truly meaningful only by an equally settled right to participate fully in agency and court proceedings."

He cited the recent California case in which one million people were saved from losing $200 million in state medical services as a result of a class suit filed on behalf of a poor person by Legal Services lawyers. He said this was a striking example of a citizen's "perfecting" his right to vote through court proceedings. He said:

Both the United States Congress and the California state legislature, to which the recipients of Medi-Cal benefits had sent elected representatives, had enacted laws which the Governor of California was ignoring in promulgating the regulations which reduced the medical payment. But only through the courts could these citizens' right to vote have any real effect because only through the courts was the Governor compelled to obey the statutes which their elected representatives had passed.

Here are other excerpts from the speech:

Administrative and court proceedings are an essential part of the American democratic process of government. In most cases, *these essential processes are virtually meaningless—they do not function adequately—unless competent legal representation is available to all parties.*

It is no insignificant fact that in the housing case I have just mentioned, *The Washington Post* noted that "previously, most judges [of the lower court] had ruled that a tenant must pay the rent or face eviction, regardless of the condition of the property at the time of rental." For until the recent past virtually no tenant appearing in the Landlord and Tenant Court ever had the services of an attorney to present facts and legal arguments or to take an appeal. The proceedings in the Court had all the elements of a farce. Their character changed only with the advent of increased legal representation of tenants by free attorneys. Even those who would have been able to afford an attorney were not advised of a right to employ one.

* * *

The Constitution demands provision for counsel in civil proceedings because the assistance of counsel has become so basic to those proceedings that—as in criminal cases—the lack of such assistance deprives the unrepresented party of his right to a fair hearing and to equal protection of the laws. Of what use are such carefully guarded constitutional protections as the right to an impartial jury, if one cannot effectively present his case before that jury?

PANEL, from p. 4

ing both peculiar and common state problems. If the final draft of the Code is acceptable to Legal Services and the NLADA, it will go to the state legislatures with the support of the Bar and Legal Services, with national as well as local support. The same strategy should be invoked in approaching landlord-tenant problems, using the American Bar Foundation, a proposed new OEO (legal research) center on housing, and the proposed ABA-NLADA Housing Project.

National Committee: This advisory committee should constitute a committee on national law reform strategies. The committee should be charged with defining goals and strategies, perhaps for the next two years, in welfare, housing (landlord-tenant, public housing and urban renewal), and consumer areas, and judicial procedures. (e.g., in forma pauperis proceedings and appointment of counsel).

Each Legal Services Project would be charged with assigning one man to be responsible for law reform strategies.

Coordination: The questions of coordinating law reform efforts (the effect, for example, of the "fact" that D. C. and California Courts are more inclined to make landlord-tenant law) and of the tactics of law reform have not yet received visible or explicit attention. By now, however, numerous Legal Services lawyers have gained considerable sophistication in these matters. These attorneys should be called together for several days of intensive discussions and their conclusions widely promulgated.

Group Representation: The how and why of group representation has not been thought out or shared. This should be done, perhaps in a fashion similar to the procedure on "tactics of law reform" suggested above. As a starting point, this advisory committee should establish relations with national welfare rights organizations.

Lawsuits Welcome, HEW Counsel Says

Alanson W. Willcox, general counsel of the Department of Health, Education and Welfare, recently said he welcomes actions by Legal Services Programs involving health, education and welfare programs.

In a speech entitled "Public Services Under a Government of Laws," before the HEW Forum February 28, he described Legal Services as a program of great significance with "enormous potentialities" for the future.

Following are excerpts from his speech:

(there has been) a very important development of the last two years: the establishement of a Legal Service Program for people who have been unable to afford such service in the past. What our own Welfare Administration had started in a test tube, the OEO, with the active and enthusiastic support of the American Bar Association, has developed into a widespread program of great significance.

Already this development has had important consequences in areas of our concern. If it can be substained, against the inevitable political challenge and the budgetary constraint, it has enormous potentialities for the future.

I pointed out at the start that most of our constitutional doctrine has evolved out of contests by persons well enough situated economically to take their cases to court. This, of course, is one main reason for the paucity of constitutional decision up until now in the fields of health, education and welfare.

The newspapers have reported the most conspicuous achievements of the new legal service program, and these in the long run may be the most significant. Although the last word has yet to be said by the Supreme Court, a year's residence requirement in AFDC has been invalidated by several courts. The "substitute father" rule in Alabama, which has disqualified many thousands of children for assistance, has been struck down by a District Court, and this decision is also under review. Georgia's "employable mother" rule has been attacked, and will almost surely be ameliorated. Governor Reagan's drastic cut-back of medicaid has been halted until the legislature acts, if it does, and the rights of California farm labor have been given new support.

Test cases are blossoming all around us. Our government of laws is beginning to take shape.

Of even greater immediate importance, perhaps, is the help that this new service is giving to thousands and thousands of the poor in their less glamorous day-to-day affairs. Where these programs operate the man or woman denied public assistance, the man or woman dispossessed from public housing, is no longer powerless to assert his

Alanson W. Willcox

rights or hers. Many a government agency is being forced to rethink its policies and procedures.

For the first time in their lives many of the poor are learning that the law can be their protector instead of their oppressor. This is a lesson that must underlie all our efforts to bring them back into the mainstream of American life.

These legal programs, where they exist at all, are woefully understaffed. Shortages of personnel put local directors to hard choices. They have to choose between services, inadequate at best, for the myriad individual problems of their clients, and the devotion of the staff time needed to litigate the test cases whose consequences, if they are successful, will eventually benefit people by the thousands.

It takes courage to litigate test cases that challenge the establishment, particularly the governmental establishment. The political stakes can be high.

A government of laws, as we understand it in the United States, gives the last word to the courts, short of constitutional or statutory amendment. Suddenly, thanks to the OEO, the courts have become deeply involved in our programs. I, for one, welcome this development unreservedly.

We can no longer sanction in practice, what we have always decried in theory: one law for the rich and another for the poor. Now that our programs have become exposed to the rigors of a government of laws, there can be no turning back.

INFORMATION NEEDED

Law in Action depends on its readers for news about housing, consumer law, and welfare problems.

If you have worked on or know about a consequential decision in any of these fields, please send the relevant information to **Law in Action**, Legal Services, Office of Economic Opportunity, 1200 19th Street, N.W., Washington, D.C. 20506. Photographs or signed articles also will be gratefully considered for publication.

EDWARD O'HARA, Editor.

REPORT, from p. 1

The four grievance areas in which Legal Services has carried out little or no activity are unemployment and underemployment; poor recreation facilities and programs; disrespectful white attitudes, and inadequacy of Federal programs.

A detailed description of these grievances can be found on Pages 146-150 of the paperback Bantam Books edition of the report.

The commission also endorsed the efforts of Legal Services to eliminate:

—State welfare residency laws.

—So-called "man-in-the-house" rules.

—Welfare searches of recipients homes.

The commission criticized other practices and provisions of welfare programs that have been challenged and questioned by Legal Services.

The commission said its investigation of the 1967 riot cities established that virtually every major episode of violence was foreshadowed by an accumulation of unresolved grievances and by widespread dissatisfaction among Negroes with the unwillingness and inability of local government to respond. Obtaining redress of such grievances is one of the fundamental jobs carried out by Legal Services Programs.

The section of the report on the need for expanding Legal Services is preceded by a section that discusses the need for new grievance-response mechanisms, which was mentioned above.

Following is the text of the section from Chapter 10 on the need for expanding Legal Services:

Expanded Legal Service to the Poor

Among the most intense grievances underlying the riots of the summer 1967 were those which derived from conflicts between ghetto residents and private parties, principally the white landlord and merchant. Though the legal obstacles are considerable, resourceful and imaginative use of available legal processes could contribute significantly to the alleviation of tensions resulting from these and other conflicts. Moreover, through the adversary process which is at the heart of our judicial system, litigants are afforded meaningful opportunity to influence events which affect them and their community. However, effective utilization of the courts requires legal assistance, a resource seldom available to the poor.

Litigation is not the only need which ghetto residents have for legal service. Participation in the grievance procedures suggested above may well require legal assistance. More importantly, ghetto residents have need of effective advocacy of their interests and concerns in a variety of other contexts, from representation before welfare agencies and other institutions of government to advocacy before planning boards and commissions concerned with the formulation of development plans. Again, professional representation can provide substantial benefits in terms of overcoming the ghetto resident's alienation from the institutions of government by implicating him in its processes. Although lawyers function in precisely this fashion for the middle-class clients, they are too often not available to the impoverished ghetto resident.

The Legal Services Program administered by the Office of Economic Opportunity has made a good beginning in providing legal assistance to the poor. Its present level of effort should be substantially expanded through increased private and public funding. In addition, the participation of law schools should be increased through development of programs whereby advanced students can provide legal assistance as a regular part of their professional training. In all of these efforts, the local bar bears major responsibility for leadership and support.

Here are excerpts from the section in Chapter 17 on the welfare system:

The Commission believes that our present system of public assistance contributes materially to the tensions and social disorganization that have led to civil disorders. The failures of the system alienate the taxpayers who support it, the social workers who administer it, and the poor who depend on it. As Mitchell Ginsberg, head of New York City's Welfare Department, stated before the Commission, "The welfare system is designed to save money instead of people and tragically ends up doing neither."

The system is deficient in two critical ways:

First, it excludes large numbers of persons who are in great need, and who, if provided a decent level of support, might be able to become more productive and self-sufficient;

Second, for those who are included, it provides assistance well below the minimum necessary for a decent level of existence, and imposes restrictions that encourage continued dependency on welfare and undermine self-respect. . .

The gaps in coverage and low levels of payments are the source of much of the long-term dissatisfaction with the system. The day-to-day administration of the system creates even sharper bitterness and dissatisfaction, because it serves to remind recipients that they are considered untrustworthy, ungrateful, promiscuous and lazy. Among the most tension-producing statutory requirements, administrative practices and regulations are the following:

First, in most states benefits are available only when a parent is absent from the home. Thus, in these states an unemployed father whose family needs public assistance in order to survive, must either abandon his family or see them go hungry. This so-called "Man-in-the-House" rule was intended to prevent payments to children who have an alternative potential source of support. In fact, the rule seems to have fostered the breakup of homes and perpetuated reliance on welfare. The irritation caused by the rule is aggravated in some states by regular searches of recipients' homes to ferret out violations.

Second, until recently *all* amounts earned by adult welfare recipients on outside jobs, except for small allowances for expenses, were deducted directly from the welfare payments they would otherwise have re-

ENGLAND STUDIES LEGAL SERVICES

Michael Zander, a lecturer in law at the London School of Economics, was kind enough to send Law in Action a report of the National Board for Prices and Incomes on "solicitors' remuneration." The report discusses the need for legal services among the poor, notes that several legal organizations are studying the problem, including the model of "neighborhood law firms" in this country.

Here is a section of the report:

> we think it likely that there is, indeed, a large volume of potential and unrecognised demand for legal services, which, if it were brought to the surface, might generate a burden of largely unremunerative work for the profession. A solution to the problem will no doubt require some controlled experiment. We understand a number of possible ideas are under examination. One, for example, is the appointment of salaried solicitors, possibly on the model of the neighbourhood law firms set up in the United States as part of the programme of the war on poverty. Such a scheme might prove both more economical and more effective in providing legal help for the less well-off sections of the community than the present system of subsidy.

ceived. This practice, required by federal law, appears to have taken away from many recipients the incentive to seek part- or full-time employment. The 1967 amendments to the welfare laws permit retention of the first $30 earned by a recipient each month and one-third of all earnings above that amount. This is a start in the right direction but does not go nearly far enough. New York City has, for example, begun experimenting with a promising program that allows welfare mothers to keep the first $85 of earnings each month and a percentage of amounts above that.

Third, in most states, there is a residency requirement, generally averaging around a year, before a person is eligible to receive welfare. These state regulations were enacted to discourage persons from moving from one state to another to take advantage of higher welfare payments. In fact, they appear to have had little, if any, impact on migration and have frequently served to prevent those in greatest need—desperately poor families arriving in a strange city—from receiving the boost that might give them a fresh start.

Report Details Right To Counsel in Riots

The National Advisory Commission on Civil Disorders, in Chapter 13 of its report, discussed the Administration of Justice Under Emergency Conditions. Here is the text of a section on the right to counsel:

> The right to counsel is a right to effective counsel. An emergency plan should provide that counsel be available at the station house to participate in the charging and screening operations, to provide information for station-house summons and release officers and to guard against allegations of brutality or fraudulent evidence. All accused persons who are not released during post-arrest processing should be represented at the bail hearing, whether or not local law provides this as a matter of right. During any pre-court detention period, defense counsel must be able to interview prisoners individually at the detention center; privacy must be provided for these lawyer-client consultations.
>
> The number of lawyers needed for this kind of individual representation is obviously great, thus furnishing another argument for screening out early as many innocent persons and minor offenders as possible, and releasing as many of the rest as can be relied upon to create no new disturbance and to return for trial. Local bar associations, public defender offices, legal aid agencies, neighborhood legal services staffs, rosters of court-assigned counsel, law schools and military establishments are sources of manpower. They can be pre-trained in the procedures of an emergency plan and called into volunteer service. Assigning one lawyer to a group of defendants should be discouraged. If possible, each defendant should have his own lawyer ready to follow the case to conclusion. Case quotas can be established ahead of time, with teams of lawyers prepared to take over in relays. Law students can be used as investigators and case assistants. Legal defense strategy and sources of experienced advice for the volunteers should be planned ahead of time.
>
> Any community plan must make adequate provision for fair representation whenever the trials are held, whether during the heat of riot or at a later, more deliberate time.
>
> There must be no letdown of legal services when trials and arraignments are postponed until the riot runs its course. The greatest need for counsel may come when the aura of emergency has dissipated. Volunteers then may be less willing to drop their daily obligations to represent riot defendants. If this occurs, assembly-line techniques may be resorted to in an effort to complete all pending matters cheaply and quickly. In one city this letdown had unfortunate results: up to 200 post-trial arraignments were assigned to one lawyer each day. Courtroom "regulars" were given such group assignments in preference to the volunteers' more individualized representation.

MIRANDA ISSUE SUBMITTED TO HIGH COURT

Attorneys of the Legal Aid Bureau of Chicago have recently filed a petition for **certiorari** in the United States Supreme Court in a case which presents several significant **Miranda** v. **Arizona** questions.

In **People** v. **Orr** the Illinois Supreme Court held that a juvenile's incriminating statement taken from him while he was in custody and handcuffed, before receiving any warning of his rights, was spontaneous and admissible because made before any questioning. In doing so, the Illinois appellate court found that **Miranda** standards were not violated and thus bypassed the question of whether that case was extended to juvenile proceedings through **In re Application of Gault.**

The Supreme Court petition challenges Illinois' interpretation of **Miranda** by arguing that the police had full opportunity to warn the juvenile of his rights before he made his statement. Thus both of the constitutional issues are presented squarely for the Court's consideration. In addition, the case raises a question of adequacy of notice given to the guardian of a juvenile taken into custody.

BESSER HEADS LSP OPERATIONS

Stephen N. Besser, former director of a Legal Services Program in the San Fernando Valley in Los Angeles, has been appointed chief of operations on the headquarters staff of the OEO Legal Services Program. He succeeds Chuck Edson, who accepted an appointment as Counsel for the President's Commission on Postal Organization.

Besser, 31, received his bachelors degree from U.C.L.A. with a major in political science and received his J.D. from Loyola University School of Law in Los Angeles in 1962.

He took a leave of absence from a Los Angeles law firm in 1966 to direct the San Fernando project. While director, he gained the confidence and support of the local bar association, the indigent population, and the community at large. As a result of his work, he received written commendations from the Board of Supervisors of Los Angeles County and the Los Angeles City Council.

Besser also served as a consultant to OEO and evaluated Legal Services programs around the country. In his new position, Besser is responsible for the distribution of Section 205 funds for legal services and the evaluation of 205 programs.

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